

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DELAWARE HEALTH CORPORATION,)
a Delaware corporation)

Plaintiff,)

V.)

Case Number: 07-829-SLR

MICHAEL O. LEAVITT, Secretary of
Health and Human Services,

Defendant.)

ANSWER

Defendant, Michael O. Leavitt, the Secretary of Health and Human Services (the “Secretary”), by and through his undersigned counsel, hereby answers, using the same numbering contained in the Complaint, Plaintiff’s Complaint as follows:

First Unnumbered Paragraph. This paragraph contains Plaintiff's characterization of its action to which no response is required.

1 - 2. Admits.

3 - 5. These paragraphs contain conclusions of law to which no responses are required.

6-7. These paragraphs contain Plaintiff's characterization of the Medicare statute, which speaks for itself. Defendant denies any such characterization and respectfully refers the Court to the cited provisions of the statute for a complete and accurate statement of its contents.

8. The first sentence contains Plaintiff's characterization of the Medicare statute, which speaks for itself. Defendant denies any such characterization and respectfully refers the Court to the cited provision of the statute for a complete and accurate statement of its contents. Admits

the second sentence.

9-12. These paragraphs contain Plaintiff's characterizations of the Medicare statute, Medicare regulations and Medicare manuals, which speak for themselves. Defendant denies any such characterizations and respectfully refers the Court to the cited provisions of the statute, regulations, and manuals for a complete and accurate statement of their contents.

13-14. These paragraphs contain partial quotations from Medicare manuals, which speak for themselves. Defendant denies any such characterization and respectfully refers the Court to the cited provisions of the manuals for a complete and accurate statement of their contents.

15-17. These paragraphs contain Plaintiff's characterizations of the Medicare statute, Medicare regulations and Medicare manuals, which speak for themselves. Defendant denies any such characterizations and respectfully refers the Court to the cited provisions of the statute, regulations and manuals for a complete and accurate statement of their contents.

18. Admits.

19-20. These paragraphs contain Plaintiff's characterizations of correspondence between the fiscal intermediary and Plaintiff, which speaks for itself. Defendant denies any such characterizations and respectfully refers the Court to the cited correspondence for a complete and accurate statement of its contents. Administrative Record ("A.R.") at 118, 120-124, 194-199.

21. Admits.

22. Denies the first sentence of this paragraph. Admits the second sentence of this paragraph.

23. Denies the first, second, and fifth sentences of this paragraph. The Secretary lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in

the third, fourth, sixth and seventh sentences of this paragraph and on that basis denies.

24. This paragraph contains Plaintiff's characterization of a discovery matter to which no response is required. Defendant respectfully refers the Court to the cited interrogatories and replies for a complete and accurate statement of their contents.

25. Denies.

26-27. These paragraphs contain Plaintiff's characterization of exhibits and testimony before the PRRB to which no response is required. Defendant denies any such characterization and respectfully refers the Court to the cited exhibits and testimony for a complete and accurate statement of their contents. A.R. 89-100.

28-30. These paragraphs contain Plaintiff's characterization of the PRRB decision, which speaks for itself. Defendant denies any such characterization and respectfully refers the Court to the PRRB decision for a complete and accurate statement of its contents. A.R. 24-36. By way of further answer, Defendant avers that it is the CMS Administrator's decision, not the PRRB decision, which is the final reviewable decision of the Secretary in this case.

31. This paragraph contains Plaintiffs characterization and quotation from the CMS Administrator's decision, which speaks for itself. Defendant denies any such characterization and respectfully refers the Court to the CMS Administrator's decision for a complete and accurate statement of its contents.

32. Admits.

COUNT ONE

33. Defendant's responses to paragraphs 1 through 32 of the Complaint are hereby adopted by reference as if fully set forth herein.

34. Denies.

35. Denies this paragraph and each of its subparagraphs (a)-(e).

The remainder of the Complaint consists of Plaintiff's prayer for relief, to which no response is required. To the extent that a response may be required, Defendant denies that Plaintiff is entitled to the relief requested or to any other relief from Defendant. All allegations contained in the Complaint not heretofore specifically admitted, modified, or denied are hereby generally denied as completely as if separately and specifically denied.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

WHEREFORE Defendant respectfully requests the Court to enter judgment dismissing this action with prejudice, affirming the validity of the challenged agency action, and awarding Defendant costs and such other relief as the Court may deem appropriate.

The Secretary files herewith a certified copy of the administrative record.

Dated: February 19, 2008

Respectfully submitted,

COLM F. CONNOLLY
United States Attorney

BY: /s/Lesley F. Wolf

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United States Department of
Health and Human Services

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DELAWARE HEALTH CORPORATION :	:
A Delaware Corporation :	:
Plaintiff, :	:
v. :	Civil Action No. 07-829-SLR
MICHAEL O. LEAVITT, SECRETARY :	:
Department of Health and Human Services :	:
Defendant. :	:

NOTICE OF FILING OF PAPER DOCUMENT

Notice is hereby given that the defendant, Michael O. Leavitt, Secretary, U. S. Department of Health and Human Services, in the above-titled action, by and through its attorneys, Colm F. Connolly, United States Attorney for the District of Delaware and Lesley F. Wolf, Assistant United States Attorney for the District of Delaware, have filed with the Court, in paper format, a certified copy of the Transcript of the record. The original document to be maintained in the case file in the Clerk's Office.

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Dated: February 19, 2008

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Plaintiff, :
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MICHAEL O. LEAVITT, SECRETARY :
Department of Health and Human Services :
:
Defendant. :

AFFIDAVIT OF SERVICE

I, **MAUREEN R. DAVIS**, an employee in the Office of the United States
Attorney for the District of Delaware, hereby attest under penalty of perjury that on
February 19, 2008, I served the foregoing:

TRANSCRIPT

by causing a copy of said document to be delivered to Plaintiff's counsel via U.S. First
Class Mail at the following address:

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BY: /s/ Maureen R. Davis
Maureen R. Davis
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